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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IN RE: FACEBOOK PRIVACY LITIGATION

Case No. 10-cv-02389-RMW

**CLASS ACTION**

**DECLARATION OF KASSRA P.  
NASSIRI IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

**[FILED UNDER SEAL PURSUANT  
TO PROTECTIVE ORDER]**

Date: January 29, 2016  
Time: 9:00 a.m.  
Courtroom: 6  
Judge: Hon. Ronald M. Whyte  
Trial Date: None Set

1 Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

2 1. I am an attorney admitted to practice in California. I am over the age of eighteen  
3 and am fully competent to make this declaration. This declaration is based upon my personal  
4 knowledge, except where expressly noted otherwise.

5 2. I am a partner of Nassiri & Jung LLP, attorneys of record for Plaintiffs Katherine  
6 Pohl and Wendy Marfeo and previously for former Plaintiff Mike Robertson, and interim co-lead  
7 class counsel.

8 3. I am submitting this declaration in support of Plaintiffs' Motion for Class  
9 Certification.

10 4. Attached hereto as exhibits are the following versions of Defendant Facebook,  
11 Inc.'s ("Facebook's") Statement of Rights and Responsibilities ("Statement"), which Facebook  
12 produced during discovery in this matter on October 14, 2014:

13 **Exhibit 2:** Statement, last revised August 28, 2009 (Bates Nos. FB\_ROB\_0000006-13)

14 **Exhibit 3:** Statement, last revised December 21, 2009 (Bates Nos. FB\_ROB\_0000014-17)

15 **Exhibit 4:** Statement, last revised April 22, 2010 (Bates Nos. FB\_ROB\_0000018-21)

16 5. Attached hereto as **Exhibit 5** is the November 26, 2008 version of Facebook  
17 Principles, including Facebook's Privacy Policy, which Facebook produced as Exhibit 11 to the  
18 Deposition of Wendy Marfeo taken by Facebook on July 15, 2015. The December 9, 2009 version  
19 of Facebook's Privacy Policy is attached as Exhibit 6 to Plaintiffs' Request for Judicial Notice  
20 ("RJN"), and the April 22, 2010 version is attached as Exhibit 7 to the RJN.

21 6. Attached to the RJN as Exhibit 8 is a post to the official Facebook Blog dated April  
22 5, 2010, by Facebook's then-Director of Corporate Communications and Public Policy, Barry  
23 Schnitt.

24 7. Attached hereto as **Exhibit 9** is a post to the official Facebook Blog dated February  
25 16, 2009, by Facebook's Chief Executive Officer, Mark Zuckerberg, which Facebook produced as  
26 Exhibit 12 to the Marfeo Deposition.

4           9.       Attached hereto as **Exhibit 11** is a post to the “Facebook Engineering” page dated  
5 May 24, 2010, by a Facebook engineer, Matt Jones, titled “Protecting Privacy with Referrers,”  
6 which Facebook produced during discovery in this matter on October 14, 2014 (Bates Nos.  
7 FB\_ROB\_0000065-70).

8            10.       Attached to the RJN as **Exhibit 12** (limited portions filed under seal pursuant to  
9       protective order) is a declaration from Mr. Jones dated September 14, 2015, which Facebook  
10      submitted in support of its Motion to Dismiss [etc.].

11            11.       Attached hereto as **Exhibit 13** (filed under seal pursuant to protective order) are  
12 relevant excerpts from the Deposition of James E. Hung, Facebook's expert witness, which  
13 Plaintiffs took in this matter on October 9, 2015.

14            12. Attached hereto as **Exhibit 14** (filed under seal pursuant to protective order) is the  
15 expert witness report of Mr. Hung, dated May 6, 2015 .

16           13.       Attached hereto as **Exhibit 15** (filed under seal pursuant to protective order) is an  
17 email dated September 2, 2009, which Facebook produced during discovery on May 5, 2015  
18 (Bates Nos. FB\_ROB\_0006658-59).

19           14.       Attached hereto as **Exhibit 16** (filed under seal pursuant to protective order) is an  
20 email dated September 3, 2009, which Facebook produced during discovery on May 5, 2015  
21 (Bates Nos. FB\_ROB\_0006666-67).

15. In September 2014, former Plaintiff Robertson propounded on Defendant Facebook Requests for Admission, Requests for Production, Interrogatories, and a Notice of Facebook's deposition pursuant to Rule 30(b)(6). In his discovery requests, Robertson sought comprehensive, class-wide ad-click data from Facebook that would allow Robertson to determine which Facebook users were part of the class. In October 2014, Facebook objected to Robertson's discovery and stated that [REDACTED]. Over

1 the next few months, Facebook continued to respond to Plaintiffs' inquiries by stating that it could  
2 not confirm the existence and accessibility of historical ad-click data. It wasn't until March 5,  
3 2015 that Facebook first notified Plaintiffs that [REDACTED] and  
4 March 17, 2015 that Facebook provided Plaintiffs with supplemental discovery responses  
5 confirming the same. Attached hereto as **Exhibit 17** (limited portions filed under seal pursuant to  
6 protective order) are Facebook's Second Supplemental Responses to Plaintiff Mike Robertson's  
7 First Set of Interrogatories, dated March 17, 2015.

8 16. Attached hereto as **Exhibit 18** (filed under seal pursuant to protective order) are  
9 Facebook's Third Supplemental Responses to Plaintiff Mike Robertson's First Set of  
10 Interrogatories, dated May 6, 2015.

11 17. On June 25, 2015, pursuant to a Court order granting Plaintiffs' Motion to Compel  
12 (Dkt. 230), Facebook produced an Excel spreadsheet which constituted an ad click table pertaining  
13 to 5,000 Facebook users. This spreadsheet has [REDACTED]  
14 [REDACTED] (Bates Nos. FB\_ROB\_0006891).

15 These [REDACTED] were described in a document produced by Facebook pursuant to Plaintiffs'  
16 notice of Mr. Hung's deposition. That summary document was marked as Exhibit 12 to the Hung  
17 Deposition and is attached hereto as **Exhibit 19** (filed under seal pursuant to protective order).

18 18. Attached hereto as **Exhibit 20** (filed under seal pursuant to protective order). is an  
19 excerpt of three clicks from the ad click table produced by Facebook, where the username was  
20 embedded in the referer header in plain English. This excerpt was marked as Exhibit 13 to the  
21 Hung Deposition.

22 19. Attached hereto as **Exhibit 21** (filed under seal pursuant to protective order) is a  
23 printout of Facebook users' profile pages which I accessed by taking the username embedded in  
24 one of the referer headers in Exhibit 20, inserting it into the URL ("Facebook.com/[username]")  
25 on my browser, and hitting "enter." This printout was marked as Exhibit 14 to the Hung  
26 Deposition.

21. Attached hereto as **Exhibit 23** (filed under seal pursuant to protective order) is a printout of Facebook users' profile pages which I accessed by taking the user ID embedded in one of the referer headers in Exhibit 22, inserting it into the URL ("Facebook.com/[userID]") on my browser, and hitting "enter." This printout was marked as Exhibit 16 to the Hung Deposition.

9           22. Attached hereto as **Exhibit 25** (filed under seal pursuant to protective order) is a  
10 printout of a page that I accessed by typing into my browser the URL of a link from footnote 18 of  
11 Mr. Hung's expert report. This printout was marked as Exhibit 8 to the Hung Deposition. It states,  
12 among other things, that there were [REDACTED] of the [REDACTED]

14           23.       Attached hereto as **Exhibit 26** (filed under seal pursuant to protective order) are  
15 notes taken by James Hung concurrently with a telephone call with Facebook’s team on April 16,  
16 2015 (Bates Nos. FB\_ROB\_0008118-19). These notes were produced by Facebook pursuant to  
17 Plaintiffs’ notice of Mr. Hung’s deposition.

18           24.     Attached hereto as **Exhibit 27** (filed under seal pursuant to protective order) are  
19 relevant excerpts from the Deposition of Wendy Marfeo, which Facebook took in this matter on  
20 July 15, 2015.

21           25.       Attached hereto as **Exhibit 28** (filed under seal pursuant to protective order) are  
22 relevant excerpts from the Deposition of Katherine Pohl, which Facebook took in this matter on  
23 April 1, 2015.

24            26.       Attached hereto as **Exhibit 29** (filed under seal pursuant to protective order) are  
25 relevant excerpts from the Deposition of Forrest Vickery, Plaintiffs' expert witness, which  
26 Facebook took in this matter on October 1, 2015.

11           29.       Plaintiffs have two other individuals, Jesse Tarli and Gilbert Mendoza, who are  
12 ready, able, and willing to serve as class representatives, particularly if this Court should  
13 determine that Marfeo or Pohl are inadequate.

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED], Facebook has not yet produced such  
20 information as to Mr. Tarli or Mr. Mendoza.

31. Attached hereto as **Exhibit 33** to this declaration is a true and correct copy of the firm resume of Nassiri & Jung LLP, which accurately sets forth the experience and qualifications of our firm's attorneys. Nassiri & Jung LLP and its lawyers have regularly engaged in major complex litigation and have extensive experience in class actions that are similar in size, scope and complexity to the present case. Prior to and throughout the duration of this litigation, Nassiri & Jung LLP has diligently investigated and prosecuted this matter, dedicating substantial resources to the investigation of the claims at issue in the action, and successfully appealing to the Ninth

1 Circuit from the dismissal by the Honorable James Ware of Plaintiffs' claims for breach of  
2 contract and fraud, in an unpublished decision that appears at 572 Fed. Appx. 494 (9th Cir. 2014).

3 32. In my experience litigating class action claims and negotiating class action  
4 settlements, for class members to obtain payment, they must submit claim forms, which typically  
5 require the member to state her correct name, contact information and Social Security Number  
6 under penalty of perjury.

7 33. I know of no individual lawsuits concerning the instant controversy, but only other  
8 class actions that were transferred to this Court, stayed, and administratively closed pending this  
9 action.

10 I declare under penalty of perjury under the laws of the United States of America that the  
11 foregoing is true and correct.

12 Dated: October 28, 2015

NASSIRI & JUNG LLP

13  
14 /s/ Kassra P. Nassiri

Kassra P. Nassiri

Attorneys for Plaintiffs and the Putative Class